IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

CRP.No. 318 of 2006(G)

AS.66/2003 of ADDL.SUB COURT, IRINJALAKUDA
OS.1014/2000 of MUNSIFF COURT, KODUNGALLUR

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REVN. PETITIONER: APPELLANT/DEFENDANT

PERINJANAM KURIES AND LOANS (P) LTD.,
PERINJANAM VILLAGE DESOM, KODUNGALLUR TALUK,
REP. BY ITS MANAGING DIRECTOR SUNDARAN NAIR,
AGED 56, S/O.KUTTAPPAN NAIR, PAYATTILA PARAMBATH
HOUSE, ONACHANMAVU DESOM, MATHILAKAM VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT: RESPONDENT/PLAINTIFF/

VIDYADHARAN,
S/O.THOTTUPULLY KOCHUKUTAN,
ONACHAMAVU DESOM, PAPINIVATOM AMSOM,
KODUNGALLUR TALUK.

BY ADV. SRI.V.M.KRISHNAKUMAR

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

C.R.P.318 OF 2006

DATED THIS THE 16th DAY OF JANUARY, 2007

ORDER

Petitioner is defendant in O.S.1014/2000 on the file of Munsiff Court, Kodungallur. Respondent is plaintiff. This revision is filed as no second appeal is maintainable in view of Section 102 of Code of Civil Procedure as the decree amount is less than Rs.25,000/- . Respondent filed the suit seeking a decree for realisation of Rs.10,000/- deposited by respondent with petitioner as fixed deposit. Petitioner contended that it was deposited by petitioner as security and there was an agreement providing for adjustment of the interest on the deposit and if not sufficient from the principal amount towards the future instalments liability in the kuri transaction and from 27th instalment onwards respondent committed default and towards the defaulted instalments the interest accrued and a portion of the principal was adjusted from the security furnished and hence respondent is not entitled to the decree sought for.

2. Learned Munsiff framed necessary issues. On the evidence of respondent as PW1 and Exts.A1 to A3 on his side and the evidence of DW1, Exts.B1 to B9 on the side of petitioner, learned Munsiff found

that petitioner did not establish existence of an agreement as alleged enabling petitioner to adjust the amount deposited towards the defaulted instalments in the kuri transaction and therefore held that respondent is entitled to the decree for realisation of Rs.10,000/- with interest at 14%. The suit was decreed with cost. Petitioner challenged the decree before Addl. Sub Court, Irinjalakuda in A.s.66/03.

3. Learned Sub Judge on re-appreciation of evidence, confirmed the decree and judgment and dismissed the appeal but without cost. It is challenged in this revision filed under Section 115 of Code of Civil Procedure, as no appeal will lie in view of Section 102 of Code of Civil Procedure.

4. Learned Counsel appearing for petitioner was heard.

5. Arguments of learned Counsel appearing for petitioner was that learned Munsiff and learned Sub Judge did not consider the contentions of the parties and the evidence in the proper perspective and omitted to take note of the fact that Rs.10,000/- was deposited as security and therefore petitioner is entitled to adjust the amount due under the kuri transaction and if so adjusted, respondent is not entitled to the decree sought for.

6. Learned Counsel argued that the question whether when respondent deposited Rs.10,000/- as security whether petitioner is entitled to adjust that amount towards the defaulted instalments due

under the kuri transaction is the question of law involved and therefore revision is to be admitted.

7. On hearing learned Counsel appearing for petitioner and on going through the judgment of learned Munsiff and learned Sub Judge, I do not find any substantial question of law. It is seen that on the available evidence, both the courts found that petitioner did not establish existence of an agreement enabling adjustment of the amount deposited by respondent before petitioner for the instalments due under kuri transaction. In the written statement itself petitioner has no specific case that Rs.10,000/- was deposited as security towards the payment of future kuri instalments. Therefore unless petitioner establishes that there was an agreement which enables petitioner to adjust the principal amount of Rs.10,000/- towards the kuri instalments, petitioner is not entitled to contend that the fixed deposit was adjusted towards the kuri instalments.

8. Learned Munsiff and learned Sub Judge considered the question whether there was an oral agreement as alleged by petitioner. Apart from oral evidence of DW1, no acceptable evidence was adduced. When learned Munsiff and learned Sub Judge appreciated the evidence and found that there was no agreement as alleged by petitioner,the finding of fact cannot be interfered with. The appreciation of evidence cannot be interfered with in exercise of the revisional jurisdiction unless appreciation of evidence was perverse.

The appreciation of evidence was proper. There is no reason to interfere with the application of evidence. When the agreement set up by petitioner was not established, petitioner is not entitled to contend that the fixed deposit was adjusted pursuant to that agreement. There is no substantial question of law involved. There is no merit in this revision.

Revision is dismissed. If petitioner is entitled to get any amount from respondent and it is legally recoverable, petitioner is entitled to realise the same.

M.SASIDHARAN NAMBIAR,JUDGE

Acd